



POLICY: REPORTING AND INVESTIGATING ALLEGATIONS OF SUSPECTED IMPROPER ACTIVITIES (WHISTLEBLOWER POLICY)

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RELATED DOCUMENTS

<p style="text-align: center;">UJ Documents (e.g. Policies, Regulations, Guidelines, Contracts)</p> <ul style="list-style-type: none"> • UJ Vision, Mission and Values • Standard Institutional Statute • UJ Conditions of Employment • Sexual Harassment Policy • Risk Management Strategy and Model 	<p style="text-align: center;">Other (e.g. laws, DoE and HEQC, directives, external guidelines)</p> <ul style="list-style-type: none"> • Constitution of South Africa Act 108 of 1996 • Protected Disclosures Act no 26 2000 • Higher Education Act 101 of 1997 • All legislation pertaining to Labour, Finance and Taxation of the Republic of South Africa
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Divisions, Constituents and/or Individuals Affected by the Policy	<ul style="list-style-type: none"> • Council Members • All University Employees • Students • External Stakeholders
Website Address	http://www.uj.ac.za and Intranet

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1. Introduction

The University of Johannesburg has a responsibility for the stewardship of University resources and the public and private support that enables it to pursue its mission. The University is committed to compliance with the laws and regulations to which it is subject and to promulgating University policies and procedures to interpret and apply these laws and regulations within the context of the University. Laws, regulations, policies and procedures strengthen and promote ethical practices and ethical treatment of the members of the University community and those who conduct business with the University.

The University's internal controls and operating procedures are intended to detect and to prevent or deter improper activities. Intentional and unintentional violations of laws, regulations, policies and procedures may, however, occur and may constitute improper activities as defined by statute (see "Definitions"). The University has a responsibility to investigate and report to appropriate parties allegations of suspected improper activities and the actions taken by the University in response thereto.

This policy governs reporting and investigation of allegations of suspected improper activities and facilitates the application of the Protected Disclosures Act No. 26 of 2000.

Employees and others are encouraged to use the guidance provided by this policy for reporting all allegations of suspected improper activities. While the scope of this policy is intended to be limited to the statutory definition of improper activities, serious or substantial violations of University policy may also constitute improper activities as determined upon review or through investigation.

This policy does not fundamentally change the responsibility for conducting investigations but clarifies normal jurisdictional interests. Individual employee grievances and issues regarding terms and conditions of employment will continue to be dealt with in terms of relevant human resources management policies and procedures and collective agreements as appropriate. Any allegations of improper activities that may result in disciplinary action against an employee or a student shall be dealt with in terms of the pre-existing disciplinary policies and procedures.

In all instances, the management of the University retains the prerogative to determine when a matter warrants an investigation and, in compliance with this policy and applicable laws and regulations, to decide on the appropriate investigative process to be employed.

2. Definitions

2.1 University Resources

For purposes of this policy, the term University resources is defined to include, but not be limited to the following, whether owned by or under the management of the University:

- cash and other assets, whether tangible or intangible; real or personal property;
- receivables and other rights or claims against third parties;
- intellectual property rights;
- effort of University employees and of any non-University entity that bills the University for its effort;
- facilities and the rights to the use of University facilities;
- the University's name;
- University records, including student records.

2.2 Improper activities

An improper activity is defined as:

“Any activity by an employee that is undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any law or regulation, including, but not limited to, corruption, bribery, theft, fraudulent claims, fraud, coercion, malicious prosecution, misuse of property, or wilful omission to perform duty, or (2) is economically wasteful, or (3) involves gross misconduct, incompetence, or inefficiency.”

2.3 Protected Disclosure

The Protected Disclosures Act No 26 of 2000 more commonly known as the “Whistle-blowing Act”, makes provision for the following:

2.3.1 employees to report unlawful or irregular conduct by employers and fellow employees;

2.3.2 protection of employees who blow the whistle from "occupational detriment" by employers as a result of making certain "protected disclosures";

"occupational detriment" includes:

- being subjected to any disciplinary action;
- being dismissed, suspended, demoted, harassed or intimidated;
- being transferred against his or her will;
- being refused transfer or promotion;
- being denied appointment to any employment, profession or office;
- being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security;
- being subjected to a term or condition of employment or retirement which is altered, or kept altered, to his or her disadvantage;
- being refused a reference, or being provided with an adverse reference;
- being threatened with any of the actions mentioned above.

2.3.3 the ultimate objectives of the Act are to:

- protect employees who “blow the whistle”;
- provide for remedies for whistle-blowers against occupational detriment;
- provide procedures for whistle-blowers to disclose information of improprieties in a responsible manner;
- create a culture facilitating the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner;
- promote the eradication of criminal and other irregular conduct in the public and private sectors.

2.4 Illegal Order

An illegal order is any directive to violate or assist in violating an applicable law, rule or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

2.5 Whistle-blower

A person or entity making a protected disclosure is commonly referred to as a whistle-blower. Whistle-blowers may be University employees (academic or employees), applicants for employment, students, vendors, contractors or the general public. The whistle-blower's role is as a reporting party. He/she is not an investigator or a finder of fact, nor does he/she determine the appropriate corrective or remedial action that may be warranted.

2.6 Locally Designated Official (LDO)

The person designated in respect of each campus as the employee with primary responsibility to receive reports of allegations of suspected improper activities.

3. Reporting Allegations of Suspected Improper Activities

3.1 Filing a Report

- 3.1.1 Any person may report allegations of suspected improper activities. Knowledge or suspicion of improper activities may originate from employees carrying out their assigned duties, students, internal or external auditors, law enforcement agencies, regulatory agencies, customers, vendors or other third parties. Allegations of suspected improper activities may also be reported anonymously.
- 3.1.2 Reports of allegations of suspected improper activities are encouraged to be made in writing so as to assure a clear understanding of the issues raised, but may be made orally. Such reports should be factual, rather than speculative or based on conclusions already drawn, and should ideally contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures.
- 3.1.3 The University recommends that any reports by persons who are not University employees be made to the relevant LDO. Such reports may also be made to another University official whom the reporting person may reasonably expect to have either responsibility over the matter or the authority to review the alleged improper activity on behalf of the University. This would be especially appropriate when the allegations involve the LDO either directly or indirectly.
- 3.1.4 Normally, a report by a University employee of allegations of a suspected improper activity should be made to the reporting employee's immediate supervisor or other appropriate administrator or supervisor within the operating unit (such as the Unit Head), or to the LDO. However, in the interest of confidentiality, when there is a potential conflict of interest or for other reasons, such reports may be made to another University official whom the reporting employee may reasonably expect to have either responsibility over the affected area or the authority to review the alleged improper activity on behalf of the University. This would be especially appropriate when the allegations involve the LDO either directly or indirectly.
- 3.1.5 Reports may also be made to the ScamStop™ Fraud Reporting Hotline. ScamStop™ is run by Grant Thornton Business Risk Services (Pty) Ltd. ScamStop™ operates independently of the University, which ensures objectivity, impartiality and absolute fairness. The control centre responds to calls 24 hours a day, 365 days a year. Calls are dealt with in all eleven official languages. All hotline employees have law degrees and are trained to gather the correct information to enable the investigation of any allegations. All information is treated as strictly confidential and callers are assured of anonymity at all times.

- 3.1.6 When a person reports allegations of suspected improper activities to an appropriate authority, the report is known as a protected disclosure. The rights of University employees and applicants for employment when making a protected disclosure are covered by The Protected Disclosures Act No. 26 of 2000.
- 3.1.7 All University employees, and especially employees in a line management role, should be aware of and alert to either oral or written formal or informal communications that may constitute a report of allegations of suspected improper activity.
- 3.1.8 Under the Protected Disclosures Act, reports of allegations of suspected improper activities may be made to either the University or to the ScamStop™ Fraud Reporting Hotline. By law these entities are prohibited from disclosing the identity of a whistle-blower unless he or she obtains the whistle-blower's permission to do so, or when the disclosure is to a law enforcement agency that is conducting a criminal investigation.

3.2 Reporting to the LDO

- 3.2.1 The Campus Director of each campus shall *ex officio* have primary responsibility to receive reports of allegations of suspected improper activities and shall thus be the LDO.
- 3.2.2 Line managers and other employees in supervisory roles, who receive a report alleging suspected improper activities, shall ensure that the matter is promptly reported to their supervisors, an appropriate University manager and/or the LDO. Such employees are charged with exercising appropriate judgement in determining which matters can be reviewed under their authority and which matters must be referred to a higher level of management or the LDO. Employees are encouraged to consult with their own line manager, the LDO or other appropriate University official and the exercise of judgement should favour upward reporting. Oral reports should normally be documented by the line manager by means of a written transcript of the oral report, and internal communications regarding allegations of improper activities should normally be in writing.
- 3.2.3 Students are encouraged to make reports of alleged improper activities via the ScamStop™ Fraud Reporting Hotline.
- 3.2.4 Line Managers and other employees in supervisory roles shall report to the LDO any allegations of suspected improper activities, whether received as a protected disclosure, reported by their subordinates in the ordinary course of performing their duties, or discovered in the course of performing their own duties when any of the following conditions are met:
- a) The matter is the result of a significant internal control or policy deficiency that is likely to exist at other units within the institution or across the University system.
 - b) The matter is likely to receive media or other public attention.
 - c) The matter involves the misuse of University resources or creates exposure to a liability in potentially material amounts.
 - d) The matter involves allegations or events that have a significant possibility of being the result of a criminal act (e.g. disappearance of cash).
 - e) The matter involves a significant threat to the health and safety of employees and/or the public.
 - f) The matter is judged to be significant or sensitive for other reasons.

- 3.2.5 In the event that any person with a reporting obligation under this policy believes that there is a conflict of interest on the part of the person to whom the allegations of suspected improper activities are to be reported, the next higher level of authority shall receive the report.
- 3.2.6 Whistle-blowers frequently make their reports in confidence. To the extent possible within the limitations of law and policy and the need to conduct a competent investigation, confidentiality of whistle-blowers will be maintained. Whistle-blowers should be cautioned that their identity may become known for reasons outside of the control of the investigators or University administrators. Similarly, the identity of the subject(s) of the investigation will be maintained in confidence with the same limitations.

3.3 Reporting to the Risk Management Committee

- 3.3.1 The LDO shall have principal responsibility for meeting the reporting requirements to the Risk Management Committee. The LDO shall consult with members of the Investigations Workgroup (to be constituted) as necessary in fulfilling this reporting responsibility and will inform the Investigations Workgroup of all reports made. The LDO (or a member of the Investigations Workgroup if the LDO has or is perceived to have a potential conflict of interest) shall make a written report to the Risk Management Committee via the Chair of the Risk Management Committee of any reported allegations of suspected improper activities when any of the following conditions are met:
- a) The matter is the result of a significant internal control or policy deficiency that is likely to exist at other units within the institution or across the University system.
 - b) The matter is likely to receive media or other public attention.
 - c) The matter involves the misuse of University resources.
 - d) The matter involves a significant threat to the health and safety of employees and/or the public.
 - e) The matter is judged to be significant or sensitive for other reasons.
- 3.3.2 If the matter alleges an improper activity by a member of the Risk Management Committee or the MEC, the LDO may report the matter directly to the Chairperson of Council.
- 3.3.3 A copy of communications sent to the Chair of the Risk Management Committee shall be sent to the respective UJ campus security department if, on the basis of the allegations it appears that a crime may have been committed. The campus security shall be consulted to determine the appropriate action with regard to these investigations.
- 3.3.4 In some instances, even an allegation of improper activity may be reportable to a funding entity or regulatory agency. More typically, at least preliminary investigation results are needed to assess reporting obligations to parties outside the University. The LDO in consultation with the leadership of the affected area, will determine the nature and timing of such communications.
- 3.3.5 Allegations of suspected losses of money, securities or other property shall be reported to the local risk management office as soon as discovered. The Executive Director – Financial Governance (or equivalent) shall be notified of such matters when they meet the criteria for reporting to the Chair of the Risk Management Committee by copy of such notification. The Executive Director shall report such

matters in accordance with the terms of any contracts with insurance or financing houses.

4. Investigating Alleged Improper Activities

- 4.1** A number of functional units within the University have responsibility for routinely conducting investigations of certain types of allegations of improper activities, and have dedicated resources and expertise for such purposes. These include Internal Audit, Protection Services and the Human Resources Division. In addition, other University parties may become involved in investigations of matters based on their areas of oversight responsibility or topical expertise, for example, environmental health and safety, risk management, research administration and academic administration.
- 4.2** An Investigations Workgroup shall be established to ensure coordination and proper reporting of investigations. The Workgroup shall receive reports from the Risk Management Committee via the Chair of the Risk Management Committee of all allegations of known or suspected improper activities, and will assess the planned course of action, including determining whether an adequate basis exists for commencing an investigation.
- 4.3** The Chair of the Risk Management Committee will chair the Investigations Workgroup. Workgroup membership will consist of three senior employees, including the Deputy Vice-Chancellor: Human Resources and Operations and one other senior employee with appropriate expertise when available.
- 4.4** The Investigations Workgroup shall make a recommendation to the Risk Management Committee on a proposed course of action in respect of all matters referred to it.
- 4.5** Where allegations of improper activity by members of the Risk Management Committee or by members of the MEC are reported to the Chairperson of Council, the Chairperson shall exercise her/his discretion as to an appropriate process for investigating such allegations.

5. Roles, Rights and Responsibilities of Whistle-blowers, Investigation Participants, Subjects and Investigators

5.1 Whistle-blowers

- 5.1.1** Whistle-blowers provide initial information related to a reasonable belief that an improper activity has occurred. The motivation of a whistle-blower is irrelevant to the consideration of the validity of the allegations. However, the intentional filing of a false report, whether orally or in writing is itself considered an improper activity that the University has the right to act upon.
- 5.1.2** Whistle-blowers shall refrain from obtaining evidence to which they do not have the right of access. Such improper access may itself be considered an improper activity.
- 5.1.3** Whistle-blowers have a responsibility to be candid with the LDO, investigators or others to whom they make a report of alleged improper activities and shall set forth all known information regarding any reported allegations. Persons making a report

of alleged improper activities should be prepared to be interviewed by the investigators appointed by the University.

- 5.1.4 Anonymous whistle-blowers must provide sufficient corroborating evidence to justify the commencement of an investigation. An investigation of unspecified wrongdoing or broad allegations will not be undertaken without verifiable evidentiary support. Because investigators are unable to interview anonymous whistle-blowers, it may be more difficult to evaluate the credibility of the allegations and therefore, less likely to result in an investigation being initiated.
- 5.1.5 Whistle-blowers are “reporting parties,” not investigators. They are not to act on their own in conducting any investigative activities, nor do they have a right to participate in any investigative activities other than as requested by investigators.
- 5.1.6 Protection of a whistle-blower’s identity will be maintained to the extent possible within the law and the legitimate needs of the investigation. Should the whistle-blower self-disclose his or her identity, the University will no longer be obligated to maintain such confidence.
- 5.1.7 A whistle-blower’s right to protection from retaliation does not extend to immunity for any complicity in the matters that are the subject of the allegations or an ensuing investigation.
- 5.1.8 Whistle-blowers have a right to be informed of the disposition of their disclosures providing that overriding legal or public interest reasons do not prevent this.

5.2 Investigation Participants

- 5.2.1 University employees and students who are interviewed, asked to provide information or otherwise participate in an investigation have a duty to fully cooperate with University-authorized investigators.
- 5.2.2 Participants should refrain from discussing or disclosing the investigation or their testimony with anyone not connected to the investigation. In no case should the participant discuss with the investigation subject the nature of evidence requested or provided or testimony given to investigators unless agreed to by the investigator.
- 5.2.3 Requests for confidentiality by participants will be honoured to the extent possible within the law and the legitimate needs of the investigation.
- 5.2.4 Participants are entitled to protection from retaliation for having participated in an investigation.

5.3 Investigation Subjects

- 5.3.1 A subject is a person who is the focus of investigative fact-finding, either by virtue of an allegation made or evidence gathered during the course of an investigation. The decision to conduct an investigation is not an accusation and it is to be treated as a neutral fact-finding process. The outcome of the investigation may or may not support a conclusion that an improper act was committed and, if so, by whom.
- 5.3.2 The identity of a subject should be maintained in confidence to the extent possible, given the law and the legitimate needs of the investigation.
- 5.3.3 Subjects should normally be informed of the allegations at the outset of a formal investigation and have opportunities for input during the investigation.

- 5.3.4 Subjects have a duty to cooperate with investigators to the extent that their cooperation will not compromise self-incrimination protections under the law.
- 5.3.5 Subjects have a right to consult with a person or persons of their choice. This may involve representation, including legal representation.
- 5.3.6 Subjects have a responsibility not to interfere with the investigation and to adhere to admonitions from investigators in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached or intimidated.
- 5.3.7 Unless there are compelling reasons to the contrary, subjects should be given the opportunity to respond to material points of evidence contained in an investigation report.
- 5.3.8 No allegation of wrongdoing against a subject shall be considered sustained unless at a minimum, a preponderance of the evidence supports the allegation.
- 5.3.9 Subjects have a right to be informed of the outcome of the investigation. If allegations are not sustained, the subject should be consulted as to whether public disclosure of the investigation results would be in the best interest of the University and the subject.
- 5.3.10 Any disciplinary or corrective action initiated against the subject as a result of an investigation pursuant to this policy shall adhere to the applicable disciplinary procedures.

5.4 Investigators

- 5.4.1 Investigators are those persons authorised by the University to conduct fact-finding and analysis related to cases of alleged improper activities.
- 5.4.2 Investigators derive their authority and access rights from University policy when acting within the course and scope of their responsibilities.
- 5.4.3 The University, investigation participants and subjects should be assured that investigators have competency in the area under investigation. Technical and other resources may be drawn upon as necessary to augment the investigation.
- 5.4.4 All investigators shall be independent and unbiased, both in fact and appearance, and may, at the discretion of the Risk Management Committee, be external to the University.
- 5.4.5 Investigators have a duty of fairness, objectivity, thoroughness, ethical behaviour and observance of legal and professional standards.
- 5.4.6 Investigations should be launched only after preliminary consideration that establishes that:
 - a) The allegation, if true, constitutes an improper activity and matters that do not meet this standard may be worthy of management review, but should not be undertaken as an investigation of an improper activity;
 - b) The allegation is accompanied by information specific enough to be investigated;

- c) The allegation has or directly points to corroborating evidence that can be pursued. Such evidence may be testamentary or documentary.

6. Additional Required Communications

- 6.1** If an investigation leads University officials to conclude that a crime has probably been committed, the results of the investigation shall be reported to the appropriate law enforcement agency. The head of Protection Services should be the conduit for communications with law enforcement agencies unless the Investigations Workgroup, in a particular situation, determines a different communications strategy.
- 6.2** If an investigation leads University officials to conclude that a faculty member has engaged in conduct that may be a violation of the Academic Code of Conduct, the results of the investigation shall be reported to Senex.
- 6.3** Consultation with the University's appointed legal council is required before negotiating or entering into any restitution agreement resulting from the findings of an investigation.